

Public Law 102-523
102d Congress

An Act

To amend the Marine Mammal Protection Act of 1972 to authorize the Secretary of State to enter into international agreements to establish a global moratorium to prohibit harvesting of tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals, and for other purposes.

Oct. 26, 1992
[H.R. 5419]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

International
Dolphin
Conservation
Act of 1992.
16 USC 136 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "International Dolphin Conservation Act of 1992".

SEC. 2. GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES.

(a) **IN GENERAL.**—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by adding at the end the following:

"TITLE III—GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES

"SEC. 301. FINDINGS AND POLICY.

16 USC 1411.

"(a) **FINDINGS.**—The Congress finds the following:

"(1) The yellowfin tuna fishery of the eastern tropical Pacific Ocean has resulted in the deaths of millions of dolphins.

"(2) Significant awareness and increased concern for the health and safety of dolphin populations has encouraged a change in fishing methods worldwide.

"(3) United States tuna fishing vessels have led the world in the development of fishing methods to reduce dolphin mortalities in the eastern tropical Pacific Ocean and United States tuna processing companies have voluntarily promoted the marketing of tuna that is dolphin safe.

"(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have indicated their willingness to participate in appropriate multilateral agreements to reduce, and eventually eliminate, dolphin mortality in that fishery.

"(b) **POLICY.**—It is the policy of the United States to—

"(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

"(2) secure appropriate multilateral agreements to reduce, and eventually eliminate, the mortality referred to in paragraph (1);

"(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets;

"(4) secure appropriate multilateral agreements to ensure that United States tuna fishing vessels shall have continued access to productive tuna fishing grounds in the South Pacific Ocean and elsewhere; and

"(5) encourage observer coverage on purse seine vessels fishing for tuna outside of the eastern tropical Pacific Ocean in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals.

16 USC 1412.

"SEC. 302. INTERNATIONAL AGREEMENTS TO ESTABLISH GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES.

"(a) IN GENERAL.—The Secretary of State, in consultation with the Secretary, may enter into international agreements which establish, in accordance with this title, a global moratorium of at least 5 years duration to prohibit harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals.

"(b) TERMS OF AGREEMENT.—Any agreement entered into under this section shall—

"(1) establish a moratorium described in subsection (a) which takes effect on March 1, 1994;

"(2) include an international research program and, notwithstanding the moratorium, authorize harvesting of tuna under that program;

"(3) provide for reviews and reports in accordance with section 304 on results of research conducted under the research program;

"(4) require each country that is a party to the agreement to take all the necessary and appropriate steps to ensure compliance with the moratorium; and

"(5) encourage each country that is a party to the agreement to seek, through bilateral and multilateral negotiations, to encourage other countries that participate in fisheries to which the agreement applies to become parties to the agreement.

"(c) COMPLIANCE BY UNITED STATES WITH MORATORIUM.—The moratorium authorized under subsection (a) may be terminated prior to December 31, 1999, with respect to the United States for the harvesting of tuna in the eastern tropical Pacific Ocean only if—

"(1) the Secretary submits to the Congress in accordance with section 304(b) a recommendation that the moratorium be terminated; and

"(2) the recommendation is approved by enactment of a joint resolution of approval.

16 USC 1413.

"SEC. 303. RESEARCH PROGRAMS.

"(a) IN GENERAL.—An agreement entered into under section 302 shall—

"(1) establish an international research program to develop methods of fishing for large yellowfin tuna—

"(A) without setting nets on dolphins or other marine mammals; or

"(B) by setting nets on dolphins or other marine mammals with zero set-caused mortality;

"(2) require that proposals for research under the program be reviewed and authorized by a competent regional organization;

"(3) require that research under the program be conducted by dedicated vessels that—

"(A) are authorized to conduct that research by a competent regional organization; and

"(B) have on board in accordance with section 305(a)(2) an observer who is responsible to, and supervised by, a competent regional organization.

"(b) LIMITATIONS ON DOLPHIN MORTALITY.—For the eastern tropical Pacific Ocean, an agreement entered into under section 302 shall require that—

"(1) the total number of research sets on dolphins conducted pursuant to this section during the period beginning March 1, 1994, and ending December 31, 1999, shall not exceed 400 annually, and that the total annual dolphin mortality shall not exceed 1,000;

"(2) the Inter-American Tropical Tuna Commission shall establish a panel to review and report on the compliance of the international yellowfin tuna fishery fleet with the limits established in paragraph (1) and make recommendations as appropriate; and

"(3) the Inter-American Tropical Tuna Commission shall establish an Advisory Board of technical specialists from the international communities of scientists, government agencies, environmental groups, and the fishing industry, to assist that commission in efforts to coordinate, facilitate, and guide research.

"(c) FUNDING.—

"(1) IN GENERAL.—An agreement entered into under section 302 shall establish fair and equitable mechanisms for funding research conducted pursuant to this section.

"(2) PROCEEDS OF RESEARCH HARVESTS.—An agreement entered into under section 302 shall provide that the proceeds of any tuna harvested for the purpose of research conducted pursuant to this section should, to the extent possible, be used for funding research conducted pursuant to this section.

"(3) LIMITATION ON USE OF UNITED STATES FUNDING.—Funding provided by the United States for research shall be used only for the purpose of developing methods of fishing for large yellowfin tuna that do not involve intentionally encircling dolphins or other marine mammals.

"(d) REVIEW OF RESEARCH PROPOSALS.—The Marine Mammal Commission established under section 201 shall—

"(1) review all research proposals submitted to the Inter-American Tropical Tuna Commission; and

"(2) recommend an appropriate response to each of those proposals, to the United States Commissioners on the Inter-American Tropical Tuna Commission.

16 USC 1414.

"SEC. 304. REVIEWS, REPORTS, AND RECOMMENDATIONS.

"(a) REPORTS BY THE SECRETARY.—The Secretary shall submit annual reports to the Congress which include—

"(1) results of research conducted pursuant to section 303;

"(2) a description of the status of stocks of yellowfin tuna;

"(3) an assessment of the economic impacts on the tuna industry and consumers caused by the moratorium established by agreements entered into under section 302;

"(4) an assessment of the effectiveness of the moratorium in protecting dolphin populations in the eastern tropical Pacific Ocean;

"(5) results of reviews conducted under section 305(c);

"(6) copies of any international agreements or undertakings authorized by or related to this title;

"(7) an assessment of the impact on fishery resources, other than yellowfin tuna, of methods of fishing for large yellowfin tuna in the eastern tropical Pacific Ocean that do not involve the intentional encirclement of dolphins; and

"(8) any other relevant information.

"(b) RECOMMENDATIONS OF THE SECRETARY.—If a competent regional organization under the auspices of which research is conducted pursuant to section 303, or any country which participates in such an organization, submits to the United States a recommendation that a moratorium established by agreements entered into under section 302 should be terminated prior to December 31, 1999, the Secretary shall—

"(1) review the information on which the recommendation is based;

"(2) consult with relevant Federal agencies, including the Marine Mammal Commission, and other interested persons; and

"(3) submit to the Congress a recommendation regarding the termination of the moratorium.

16 USC 1415.

"SEC. 305. INTERNATIONAL COMMITMENTS.

"(a) LIMITATION ON APPLICATION OF BAN ON IMPORTS.—Except as provided in subsection (b), the Secretary of the Treasury shall not, under section 101(a)(2) (A) and (B), ban the importation of yellowfin tuna or yellowfin tuna products from a country that transmits to the Secretary of State a formal communication in which the country commits to—

"(1) implement a moratorium of at least 5 years duration beginning March 1, 1994, on the practice of harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals unless the moratorium is terminated in accordance with section 302(c);

"(2) require an observer on each vessel of the country larger than 400 short tons carrying capacity which engages in purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, and ensure that at least 50 percent of all such observers are responsible to, and supervised by, a competent regional organization;

"(3) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in 1992 to a level that is lower than such mortality in 1991 by a statistically significant margin; and

"(4) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in the period beginning January 1, 1993, and ending February 28, 1994, to a level that is lower than such mortality in 1992 by a statistically significant margin.

"(b) SUBSEQUENT BANS ON FISH AND FISH PRODUCT IMPORTS FOR FAILURE TO COMPLY WITH COMMITMENTS.—

"(1) BAN ON IMPORTS OF YELLOWFIN TUNA AND YELLOWFIN TUNA PRODUCTS.—The Secretary, in consultation with the Secretary of State, shall periodically determine whether each country which has transmitted a formal communication expressing the commitments described in subsection (a) is fully implementing those commitments. If the Secretary determines that any such country is not implementing those commitments—

"(A) the Secretary shall notify the President and the Congress of that determination; and

"(B) 15 days after such notification, the Secretary of the Treasury shall ban the importation from that country of all yellowfin tuna and yellowfin tuna products.

"(2) BAN ON IMPORTS OF OTHER FISH AND FISH PRODUCTS.—

"(A) IN GENERAL.—If—

"(i) a country does not, within 60 days after the establishment with respect to that country of a ban on importation under paragraph (1)(B), certify and provide reasonable proof to the Secretary that the country has fully implemented the commitment described in subsection (a)(1) or has taken the necessary actions to remedy its failure to comply with the commitments described in subsection (a) (2), (3), and (4); and

"(ii) the Secretary does not, before the end of that 60-day period, certify to the President that the country has provided such certification and proof;

the President shall direct the Secretary of the Treasury to ban the importation from that country of all articles (other than those subject to an importation ban under paragraph (1)(B)) that are classified under one or more of those fish and fish product categories that the President, subject to subparagraph (B), considers appropriate to carry out this paragraph.

President.

"(B) BAN CRITERIA.—The one or more fish and fish product categories to which the President imposes an import ban under subparagraph (A) with respect to a country must be a fish and fish product category or categories with respect to which the articles classified thereunder and imported from that country in the base year had an aggregate customs valuation equal to 40 percent of the aggregate customs valuation of all articles classified under all fish and fish product categories that were imported from that country during the base year.

"(C) DEFINITION OF BASE YEAR.—For purposes of subparagraph (B), the term 'base year' means the calendar year immediately occurring before the calendar year in which the import ban under subparagraph (A) commences with respect to the country.

"(3) DURATION OF IMPORT BANS.—Bans on importation imposed under paragraphs (1) and (2) with respect to a country shall continue in effect until the Secretary determines that

the country is implementing the commitments described in subsection (a).

"(4) **IMPLEMENTATION OF IMPORT BANS.**—The Secretary of the Treasury shall take such action as may be necessary or appropriate to implement importation bans imposed under paragraphs (1) and (2).

"(c) **REVIEWS AND REPORTS.**—The Secretary, in consultation with the Secretary of State, shall—

"(1) periodically review the activities of countries which have transmitted to the Secretary of State formal communications expressing the commitments described in subsection (a), to determine whether those countries are complying with those commitments; and

"(2) include the results of those reviews in annual reports submitted to the Congress pursuant to section 304(a).

16 USC 1416.

"SEC. 306. PERMITS FOR TAKING DOLPHINS.

"(a) **ADDITIONAL RESTRICTIONS UNDER GENERAL PERMIT.**—Notwithstanding section 104(h), the general permit issued to the American Tunaboat Association on December 1, 1980, shall be subject to the following additional restrictions:

"(1) Total dolphin mortalities (including mortalities resulting from research) authorized by the permit shall not exceed 1,000 during the period beginning January 1, 1992, and ending December 31, 1992, and 800 during the period beginning January 1, 1993, and ending March 1, 1994.

"(2) No purse seine net may be deployed under the permit on or to encircle any school of dolphins in which any eastern spinner dolphin (*Stenella longirostris*) or coastal spotted dolphin (*Stenella attenuata*) is observed prior to release of the net skiff.

"(3) The permit shall expire March 1, 1994, unless no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 before that date (notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country).

"(4) If no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 before March 1, 1994, and notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country—

"(A) the total dolphin mortalities authorized by the permit for each year after 1992, including mortalities caused by research, shall not exceed the number of dolphin mortalities which occurred under the permit during the preceding year;

"(B) the total dolphin mortalities occurring under the permit each year shall continue to be reduced by statistically significant amounts each year to levels approaching zero by December 31, 1999;

"(C) the permit shall be subject to any additional restrictions that the Secretary considers appropriate; and

"(D) the permit shall expire December 31, 1999.

"(b) **PERMITS REQUIRED FOR TAKING DOLPHINS FOR RESEARCH PURPOSES.**—An agreement entered into under section 302 shall not supersede or be interpreted to supersede any provision of this

Act under which a permit under this Act is required for activities conducted pursuant to this title.

“(c) MAJOR PURSE SEINE TUNA FISHING COUNTRY DEFINED.—For purposes of this section, the term ‘major purse seine tuna fishing country’ means a country which on the effective date of this title has an active purse seine tuna fishing fleet of 20 or more vessels.

“SEC. 307. PROHIBITIONS.

16 USC 1417.

“(a) IN GENERAL.—It is unlawful—

“(1) for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe;

“(2) for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, except—

“(A) as necessary for scientific research approved by the Inter-American Tropical Tuna Commission;

“(B) in accordance with a recommendation that is approved under section 302(c)(2); or

“(C) as authorized by the general permit issued to the American Tunaboat Association on December 1, 1980 (including any additional restrictions applicable under section 306(a)), notwithstanding any agreement under section 302 with a country that is not a major purse seine tuna fishing country (as that term is defined in section 306(c));

“(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 305(b) (1) or (2);

“(4) for any person to violate any regulation promulgated under this title;

“(5) for any person to refuse to permit any duly authorized officer to board a vessel subject to that person’s control for purposes of conducting any search or inspection in connection with the enforcement of this title; and

“(6) for any person to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (5).

“(b) PENALTIES.—

“(1) CIVIL PENALTY.—A person that knowingly and willfully violates subsection (a) (1), (2), (3), (4), or (5) shall be subject to a civil penalty under section 105(a).

“(2) CRIMINAL PENALTY.—A person that knowingly and willfully violates subsection (a)(6) shall be subject to a criminal penalty under section 105(b).

“(c) CIVIL FORFEITURES.—Any vessel (including its fishing gear, appurtenances, stores, and cargo) used, and any fish (or its fair market value) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by this section shall be subject to forfeiture to the United States in the manner provided in section 310 of the Magnuson Fishery Conservation and Management Act.

“(d) DOLPHIN SAFE TUNA.—For purposes of this section, tuna or a tuna product is dolphin safe if—

"(1) it does not contain tuna that was harvested on the high seas by a vessel engaged in driftnet fishing, as that term is defined in section 4003 of the Driftnet Impact, Monitoring, Assessment, and Control Act of 1987;

"(2) in the case of tuna or a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean, it is dolphin safe under subsection (d)(2) of the Dolphin Protection Consumer Information Act;

"(3) in the case of tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; and

"(4) in the case of tuna or a product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals, it is accompanied by a written statement executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.

16 USC 1418.

"SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the National Marine Fisheries Service for carrying out section 303, \$3,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998."

(b) CLERICAL AMENDMENT.—The table of contents at the end of the first section of that Act is amended by adding at the end the following:

"TITLE III—GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES

"Sec. 301. Findings and policy.

"Sec. 302. International agreements to establish global moratorium to prohibit certain tuna harvesting practices.

"Sec. 303. Research program.

"Sec. 304. Reviews, reports, and recommendations.

"Sec. 305. International commitments.

"Sec. 306. Permits for taking dolphins.

"Sec. 307. Prohibitions.

"Sec. 308. Authorization of appropriations."

(c) DEFINITIONS.—Section 3 of that Act (16 U.S.C. 1362) is amended by adding at the end the following:

"(15) The term 'fishery' means—

"(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

"(B) any fishing for such stocks.

"(16) The term 'competent regional organization'—

“(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

“(B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

“(17) The term ‘intermediary nation’ means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B). If such nation certifies and provides reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States pursuant to this section, the Secretary shall, as soon as practicable after receiving complete information regarding certification and proof, make an affirmative finding that such nation does not constitute an intermediary nation for purposes of this section.”.

SEC. 3. AMENDMENTS TO TUNA CONVENTIONS ACT OF 1950 AND SOUTH PACIFIC TUNA ACT OF 1988.

(a) TUNA CONVENTIONS ACT OF 1950.—The Tuna Conventions Act is amended—

(1) in section 3—

(A) in paragraph (b) by striking “and” after the semicolon at the end;

(B) in paragraph (c) by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(d) at least one shall be chosen from a nongovernmental conservation organization.”; and

(2) in section 4 by inserting after “under the conventions,” the following: “and from nongovernmental conservation organizations.”.

(b) SOUTH PACIFIC TUNA ACT OF 1988.—Section 20(a) of the South Pacific Tuna Act of 1988 (16 U.S.C. 973r) is amended by striking “1988, 1989, 1990, 1991, and 1992” each place it appears and inserting “1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002”.

Approved October 26, 1992.

16 USC 952.

16 USC 953.

LEGISLATIVE HISTORY—H.R. 5419:

HOUSE REPORTS: No. 102-746, Pt. 1 (Comm. on Merchant Marine and Fisheries) and Pt. 2 (Comm. on Ways and Means).

CONGRESSIONAL RECORD, Vol. 138 (1992):

Sept. 22, 24, considered and passed House.

Oct. 8, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 28 (1992):

Oct. 26, Presidential statement.